THE UNITED STATES.

No. 1202.

TRANSCRIPT RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1202.

THE UNITED STATES, PLAINTIFF,

vs.

SELAH CROSBY CARLL.

CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED FEBRUARY 18, 1889.

105 U. S.
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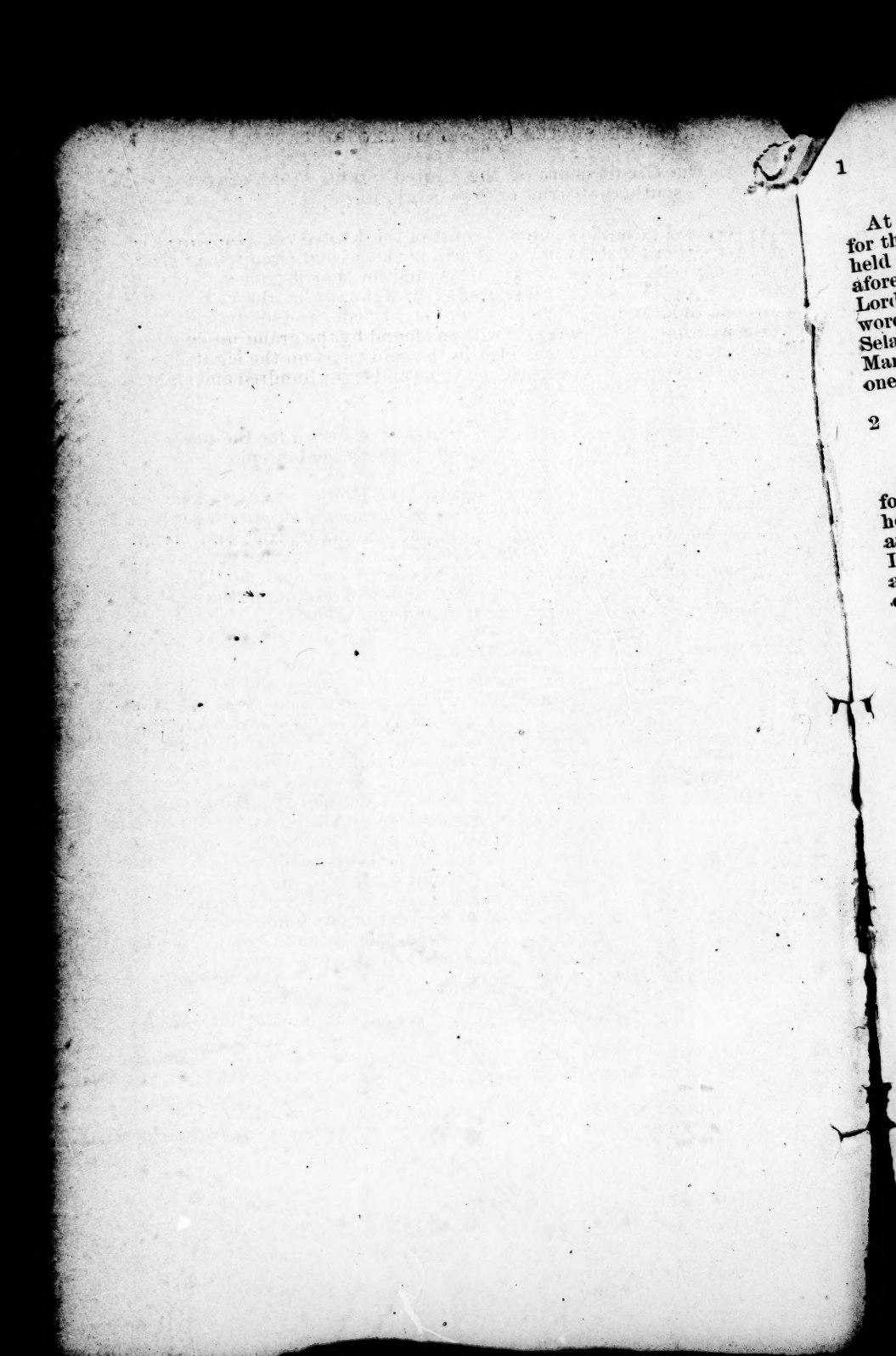

In the circuit court of the United States of America for the southern district of New York, in the second circuit.

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, begun and held in the city of New York, within and for the district and circuit aforesaid, on the second Wednesday of January, in the year of our Lord one thousand eight hundred and eighty-one, an indictment in the words and figures following, to wit, was found by the grand jury against Selah Crosby Carll, and was filed in the said court on the eighth day of March, in the year of our Lord one thousand eight hundred and eighty-one.

2 Circuit court of the United States of America for the southern district of New York, in the second circuit.

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, begun and held in the city of New York, within and for the district and circuit aforesaid, on the second Wednesday of January, in the year of our Lord one thousand eight hundred and eighty-one, and continued by adjournment to and including the eighth day of March, in the year of our Lord one thousand eight hundred and eighty-one.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The jurors of the United States of America within and for the district and circuit aforesaid, on their oath, present that Selah Crosby Carll, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-first day of April, in the year of our Lord one thousand eight hundred and seventy-nine, at the southern district of New York, and within the jurisdiction of this court, feloniously and with intent to defraud the Bank of the Metropolis, which said bank is a corporation organized under the laws of the State of New York, did pass, utter, and publish upon and

3 to the said Bank of the Metropolis a falsely made, forged, counterfeited, and altered obligation and security of the United States, to wit, a falsely made, counterfeited, forged, and altered bond of the United States of the funded loan of the year of our Lord one thousand eight hundred and eighty-one, which said falsely made, counterfeited, forged, and altered bond, obligation, and security was in words and figures following, that is to say:

"WASHINGTON, *May 1st*, 1871.

"Funded loan of 1881. Interest at 5 per cent. Principal and interest payable in coin at the Treasury of the United States. 10,000.

"The United States of America are indebted to Selah C. Carll, or assigns, in the sum of ten thousand dollars. [+14481+

"+14481+]

"This bond is issued in accordance with the provisions of an act of Congress, entitled 'An act to authorize the refunding of the national debt,' approved July 14, 1870, amended by an act approved Jan-

4 uary 20th, 1871, and is redeemable at the pleasure of the United States after the first day of May, A. D. 1881, in coin of the standard value of the United States on said July 14th, 1870, with interest in such coin from the day of the date hereof, at the rate of five per centum per annum, payable quarterly on the first day of February, May, August, and November in each year. The principal and interest are exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority. Transferable on the books of this office.

"JOHN ALLISON,
"*Register of the Treasury.*

"Entered C. F. B. Recorded H. M. Act of July 14th, 1870."

Which said false, forged, counterfeited, and altered bond, then
5 and there bore the imprint and the impression of the seal of the Department of the Treasury of the United States, and upon which said falsely made, forged, counterfeited, and altered bond was then and there an endorsement in words and figures following, that is to say: "Act of July 14th, 1870, amended January 20th, 1871. Transfer, No. . Original date, August 1st, 1876. Original No. ; then and there against the peace of the United States and their dignity, and contrary to the form of the statute of the United States in said case made and provided.

6 SECOND COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present, that Selah Crosby Carll, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the nineteenth day of December, in the year of our Lord one thousand eight hundred and seventy-nine, at the southern district of New York, and within the jurisdiction of this court, feloniously and with intent to defraud the Bank of the Metropolis, a corporation duly organized under the laws of the State of New York, did pass, utter, and publish to and upon the said Bank of the Metropolis a certain falsely made, forged, counterfeited, and altered obligation and security of the United States, to wit, a falsely made, forged, counterfeited, and altered bond of the United States of the denomination of ten thousand dollars, which said falsely made, forged, counterfeited and altered bond, obligation, and security was in words and fig-
7 ures following, that is to say:

"WASHINGTON, *May 1st* 1871.

"Funded loan of 1881. Interest 5 per cent. Principal and interest payable in coin at the Treasury of the United States.

"The United States of America are indebted to Selah C. Carll, or assigns, in the sum of ten thousand dollars.

"+29438+] [+29438+

"This bond is issued in accordance with the provisions of an act of Congress, entitled 'An act to authorize the refunding of the national debt,' approved July 14th, 1870, amended by an act approved January 20, 1871, and is redeemable at the pleasure of the United States after the first day of May, A. D. 1881, in coin of the standard value of the United States on said July 14th, 1870, with interest in such coin from the day of the date hereof at the rate of five per centum per annum,

payable quarterly on first day of February, May, August, and
8 November in each year. The principal and interest are exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority. Transferable on the books of this office.

"JOHN ALLISON,
"*Register of the Treasury.*

"Entered C. F. B. Recorded H. M. Act of July 14th, 1870," Which said falsely made, forged, counterfeited, and altered bond then and there bore the imprint and impression of the seal of the Department of the Treasury of the United States, and upon which said falsely made, forged, counterfeited, and altered bond then and there was an indorsement in words and figures following, that is to say: "Act of July 14th, 1870, amended January 20th, 1871. Transfer No. . Original date, June 24th, 1876. Original No. ;" then and there against the peace of the United States and their dignity, and contrary to the form of the statute of the said United States in such case made and provided.

10 THIRD COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present, that Selah Crosby Carll, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twentieth day of September, in the year of our Lord one thousand eight hundred and seventy-nine, at the southern district of New York, and within the jurisdiction of this court, feloniously and with intent to defraud the Bank of the Metropolis, a corporation duly organized under the laws of the State of New York, did pass, utter, and publish upon and to said Bank of the Metropolis a falsely made, forged, counterfeited, and altered security and obligation of the United States, to wit, a falsely made, forged, counterfeited, and altered bond of the United States of the denomination of ten thousand dollars, which said falsely made, forged, counterfeited, and al-
11 tered bond, obligation, and security was in words and figures following, that is to say:

"No. 19294] TREASURY DEPARTMENT, REGISTER'S OFFICE. [10,000.

["No. 19294.] [10,000.

"It is hereby certified that the United States of America are indebted unto Selah C. Carll, or assigns, the sum of ten thousand dollars, redeemable after the 30th day of June, 1881, with interest from the first day of January, 1866, inclusive, at six per cent. per annum, payable on the first day of January and July in each year. This debt is authorized by acts of Congress, approved July 17th and August 5th, 1861, and is transferable on the books of this office.

"Washington, May 24, 1866.

"J. A. GRAHAM,
"*Acting Register U. S. Treasury.*

"Entered J. H. J. Recorded S. R. N. Loan of July 17th and August 5th, 1861, and which said falsely made, forged, counterfeited, and altered bond, obligation, and security then and there purported
12 to bear the impression of the seal of the Department of the Treasury of the United States; then and there against the peace of the United States and their dignity, and contrary to the form of the statute of the said United States in such case made and provided.

13 FOURTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present, that Selah Crosby Carll, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and eighty, at the southern district of New York, and within the jurisdiction of this court, feloniously and with intent to defraud the Bank of the Metropolis, a corporation duly organized under the laws of the State of New York, did pass, utter, and publish to and upon the said Bank of the Metropolis, a certain falsely made, forged, counterfeited, and altered obligation and security of the United States, to wit, a falsely made, forged, counterfeited, and altered bond of the denomination of five thousand dollars, which said falsely made, forged, counterfeited, and altered bond, obligation,
14 and security was in words and *and* figures following, that is to say:

"WASHINGTON, *May 1st*, 1871.

"Funded loan of 1881. Interest five per cent. Principal and interest payable in coin at the Treasury of the United States.

"Five thousand. The United States of America are indebted to Selah C. Carll, or assigns, in the sum of five thousand dollars.

+8967+] [+8967+

"This bond is issued in accordance with the provisions of an act of Congress, entitled 'An act to authorize the refunding of the national debt,' approved July 14, 1870, amended by an act approved January 20th, 1871,' and is redeemable at the pleasure of the United States after the first day of May, A. D. 1881, in coin of the standard value of the United States, on said July 14th, 1870, with interest in such coin
15 from the day of the date hereof at the rate of five per centum per annum, payable quarterly on the first day of February, May, August, and November in each year. The principal and interest are exempt from the payment of all taxes or duties of the United States, as from taxation in any form by or under State, municipal, or local authority. Transferable on the books of this office.

"JOHN ALLISON,
"*Register of the Treasury.*

"Entered C. F. B. Recorded W. L. Act of July, 14th. 1870, which said falsely made, forged, counterfeited, and altered bond, obligation, and security purported to bear the imprint and the impression of the seal of the Department of the Treasury of the United States, and on which said falsely made, forged, counterfeited, and altered bond, obligation, and security, was then and there an indorsement in
16 words and figures following, that is to say: "Act of July 14th, 1870. Amended January 20th, 1871. Transfer No. . Original date, Feb. 2, 1878. Original No. "; then and there against the peace of the United States and their dignity, and contrary to the form of the statute of the said United States in such case made and provided.

17 FIFTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present, that Selah Crosby Carll, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and eighty, at the southern district of New York, and within the jurisdiction of this

court, feloniously and with intent to defraud the Bank of the Metropolis, a corporation duly organized under the laws of the State of New York, did pass, utter, and publish to and upon the said Bank of the Metropolis a certain falsely made, forged, counterfeited, and altered obligation and security of the United States, to wit, a falsely made, forged, counterfeited, and altered bond of the United States of the denomination of one thousand dollars, which said falsely made, forged, counterfeited and altered bond, obligation, and security was
18 then and there in words and figures following, that is to say:

"WASHINGTON, *September 1st*, 1876.

"Office of the Secretary of the Treasury Department. D. B. Funded loan of 1891. Interest 4½ per cent. Principal and interest payable in coin at the Treasury of the United States.

"The United States of America are indebted to Selah C. Carll, or assigns, in the sum of one thousand dollars.

+9791+] [+9791+

"This bond is issued in accordance with the provisions of an act of Congress, entitled 'An act to authorize the refunding of the national debt,' approved July 14th, 1870, amended by an act approved January 20th, 1871, and is redeemable at the pleasure of the United States, after the first day of Sept. A. D. 1891, in coin of the standard value of the United States on said July 14th, 1870, with interest in such
19 coin from the day of the date hereof at the rate of four and a half per centum per annum, payable quarterly on the first day of December, March, June, and September in each year. The principal and interest are exempt from the payment of all taxes or duties of the United States as well as from taxation in any form by or under State, municipal, or local authority. Transferable on the books of this office.

"W. P. TITCOMB,
"*Act'g Register of the Treasury.*

"Entered. T. E. J. Recorded. H. M. Act of July 14th, 1870."

And which said falsely made, forged, counterfeited, and altered bond, obligation, and security then and there purported to bear the imprint and the impression of the seal of the Department of the Treasury
20 of the United States; and upon which said falsely made, forged, counterfeited, and altered bond, obligation, and security then and there was an indorsement in words and figures following, that is to say: "Act of July 14th, 1870, amended January 20th, 1871. Transfer No. . Original date Sept. 7th, 1877. Original No. ;" then and there against the peace of the United States and their dignity, and contrary to the form of the statute of the United States in such case made and provided.

21 SIXTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that Selah Crosby Carll, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and eighty, at the southern district of New York, and within the jurisdiction of this court, feloniously and with intent to defraud the Bank of the Metropolis, a corporation

duly organized under the laws of the State of New York, did pass, utter, and publish to and upon the said Bank of the Metropolis, a certain falsely made, forged, counterfeited, and altered obligation and security of the United States, to wit, a bond of the United States of the denomination of one thousand dollars, which said falsely made, forged, counterfeited, and altered bond, obligation, and security, was in words and figures following, that is to say:

22 "WASHINGTON, *May 1st*, 1871.

"Funded loan of 1881. Interest, five per cent. Principal and interest payable in coin at the Treasury of the United States.

"The United States of America are indebted to Selah C. Carll or assigns, in the sum of one thousand dollars.

"+19351+] [+19351+

"This bond is issued in accordance with the provisions of an act of Congress, entitled 'An act to authorize the refunding of the national debt,' approved July 14th, 1870, amended by an act approved January 20th, 1871, and is redeemable at the pleasure of the United States after the first day of May, A. D. 1881, in coin of the standard value of the United States on said July 14th, 1870, with interest in such coin from the day of the date hereof, at the rate of five per centum per annum, payable quarterly on the first day of February, May, August, and
23 November in each year. The principal and interest are exempt from the payment of all taxes or duties of the United States as well as from taxation in any form by or under State, municipal, or local authority. Transferable on the books of this office.

"JOHN ALLISON,
"*Register of the Treasury.*

"Entered. C. F. B. Recorded. W. L. Act of July 14th, 1870."

And which said falsely made, forged, counterfeited, and altered bond, obligation, and security then and there purported to bear an imprint and the impression of the seal of the Department of the Treasury of the United States, and on which said falsely made, forged, counterfeited, and altered bond, obligation, and security there and then was an indorsement in words and figures following, that is to say: "Act of
24 July 14th, 1870, amended January 20th, 1871. Transfer No. . Original date, Feb. 2d, 1878. Original No. ;" then and there against the peace of the United States and their dignity, and contrary to the form of the statute of the said United States in such case made and provided.

25 SEVENTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that Selah Crosby Carll, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the eighteenth day of March, in the year of our Lord one thousand eight hundred and eighty, at the southern district of New York, and within the jurisdiction of this court, feloniously and with intent to defraud the Bank of the Metropolis, a corporation duly organized under the laws of the State of New York, did pass, utter, and publish to and upon the said Bank of the Metropolis a certain falsely made, forged, counterfeited, and altered obligation and security of the United States, to wit, a falsely made, forged, counter-

feited, and altered bond of the United States, of the denomination of one thousand dollars, which said falsely made, forged, counterfeited, and altered bond, obligation, and security, was in words and figures following, that is to say:

"1877. 1907. Four per cent. consuls of the United States. 4. 4. Principal and interest payable in coin at the Treasury of the United States.

"WASHINGTON, *July 1st*, 1877.

"+22259+] [+22259+

"The United States of America are indebted to Seleah C. Carll, or assigns, in the sum of one thousand dollars. This bond is issued in accordance with the provisions of an act of Congress, entitled 'An act to authorize the refunding of the national debt,' approved July 14th, 1870, amended by an act approved January 20th, 1871, and is redeemable at the pleasure of the United States after the first day of July, A. D. 1907, in coin of the standard value of the United States on said July 14th, 1870, with interest in such coin from the day of the date hereof, at the rate of four per centum per annum, payable quarterly on the first day of October, January, April, and July in each year. The principal and interest are exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority. Transferable on the books of this office. Office of the Secretary, Treasury Department. D. B.

"G. W. SCOFIELD,
"*Register of the Treasury.*

"Entered. C. F. B. Recorded. P. H. Act of July 14th, 1870."

And which said falsely made, forged, counterfeited, and altered bond, obligation, and security, then and there purported to bear the imprint and the impression of the seal of the Department of the Treasury of the United States, and on which said falsely made, forged, counterfeited, and altered bond, obligation, and security then and there was an endorsement, in words and figures following, that is to say: "Act of July 14th, 1870, amended January 20th, 1871. Transfer No. . Original date, Aug. 15, 1878. Original No. ." Then and there against the peace and dignity of the United States, and contrary to the form of the statute of the United States in such case made and provided.

EIGHTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present, that Selah Crosby Carll, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the eighteenth day of March, in the year of our Lord one thousand eight hundred and eighty, at the southern district of New York, and within the jurisdiction of this court, feloniously, and with intent to defraud the Bank of the Metropolis, a corporation duly organized under the laws of the State of New York, did pass, utter, and publish to and upon the said Bank of the Metropolis, a certain falsely made, forged, and counterfeited obligation and security of the United States, to wit, a falsely made, forged, counterfeited and, al-

tered bond of the United States of the denomination of one hundred dollars, which said falsely made, forged, counterfeited, and al-
30 tered bond, obligation, and security was then and there in words and figures following, that is to say:

"WASHINGTON, *May 1st*, 1871.

"Series of 1878. Funded loan of 1881. Interest, 5 per cent. Principal and interest payable in coin, at the Treasury of the United States.

"The United States of America are indebted to Selah C. Carll, or assigns, in the sum of one hundred dollars.

"+12076+] [+12076+

"This bond is issued in accordance with the provisions of an act of Congress, entitled 'An act to authorize the refunding of the national debt, approved July 14th, 1870, amended by an act approved January 20th, 1871,' and is redeemable at the pleasure of the United States after the first day of May, A. D. 1881, in coin of the standard value of the United States, on said July 14th, 1870, with interest in such coin
31 from the day of the date hereof, at the rate of five per centum per annum, payable quarterly, on the first day of February, May, August, and November, in each year. The principal and interest are exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority. Transferable on the books of this office.

"G. W. SCOFIELD,
"*Register of the Treasury.*

"Date of issue, Dec. 2, 1878. Entered. C. F. B. Recorded. W. L. Act of July 14th, 1870.

And which said falsely made, forged, counterfeited, and altered bond, obligation, and security then and there purported to bear the imprint and the impression of the seal of the Department of the Treasury of the United States, then and there against the peace of the United
32 States and their dignity, and contrary to the form of the statute of the said United States in such case made and provided.

33 NINTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that Selah Crosby Carll, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and eighty, at the southern district of New York, and within the jurisdiction of this court, feloniously, and with intent to defraud the Bank of the Metropolis, a corporation duly organized under the laws of the State of New York, did pass, utter, and publish to and upon the said Bank of the Metropolis, a certain falsely made, forged, counterfeited, and altered obligation and security of the United States, to wit, a falsely made, forged, counterfeited, and altered bond of the United States, of the denomination of one thousand dollars, which said falsely made, forged, counter-
34 feited, and altered bond, obligation, and security was then and there in word and figures following, that is to say:

"WASHINGTON, *Sept.* 1, 1876.

"Office of the Secretary, Treasury Department. D. B. Funded loan of 1891. Interest, 4½ per cent. Principal and interest payable in coin at the Treasury of the United States. 1,000.

"The United States of America are to Selah C. Carll, or assigns, in the sum of one thousand dollars.

"+9792+] [+9792+

"This bond is issued in accordance with the provisions of an act of Congress, entitled 'An act to authorize the refunding of the national debt,' approved July 14th, 1870, amended by an act approved January 20th, 1871,' and is redeemable at the pleasure of the United States after the first day of September, A. D. 1891, in coin of the standard value of the United States, on said July 14th, 1870, with interest in such coin from the day of the date hereof, at the rate of four
35 and a half per centum per annum, payable quarterly on the first day of December, March, June, and September in each year. The principal and interest are exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority. Transferable on the books of this office.

"W. P. TITCOMB,
"*Acting Register of the Treasury.*

"Entered. T. E. J. Recorded. H. M. Act of July, 14th, 1870."

And which said falsely made, forged, counterfeited, and altered bond, obligation, and security then and there purported to bear the imprint and the impression of the seal of the Department of the Treasury of the United States; and upon which said falsely made, forged, counterfeited, and altered bond, obligation, and security
36 then and there was an endorsement in words and figures following, that is to say: "Act of July 14th, 1870, amended January 20th, 1871. Transfer No. . Original date, Sept. 7, 1877. Original No., ;" then and there, against the peace of the United States and their dignity, and contrary to the form of the statute of the said United States in such cases made and provided.

37 TENTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present, that Selah Crosby Carll, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and eighty, at the southern district of New York, and within the jurisdiction of this court, feloniously, and with the intent to defraud the Bank of the Metropolis, a corporation duly organized under the laws of the State of New York, did pass, utter, and publish to and upon the said Bank of the Metropolis a certain falsely made, forged, counterfeited, and altered obligation and security of the United States, to wit, a falsely made, forged, counterfeited, and altered bond of the United States of the denomination of one thousand dollars, which said falsely made, forged, counterfeited, and altered bond, obligation, and security was then
38 and there, in words and figures following, that is to say:

"+9852+] [+9852+

"This bond is issued in accordance with the provisions of an act of Congress entitled 'An act to authorize the refunding of the national debt,' approved July 14, 1870, amended by an act approved January 20, 1871, and is redeemable at the pleasure of the United States after the first day of Sept., A. D. 1891, in coin of the stand' value of the United States on said July 14th, 1870, with interest, in such coin, from the day of the date hereof, at the rate of four and a half per
47 centum per annum, payable quarterly on the first day of December, March, June, and September, in each year. The principal and interest are exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority. Transferable on the books of this office.

"W. P. TITCOMB,
"*Act'g Register of the Treasury.*

"Entered T. E. J. Recorded W. L. Act of July 14th, 1870."

And which said falsely made, forged, counterfeited, and altered bond, obligation, and security then and there purported to bear the imprint and the impression of the Department of the Treasury of the United States; and upon which said falsely made, forged, counterfeited, and altered bond, obligation, and security there and then was an indorsement in words and figures following, that is to say: "Act of
48 July 14th, 1870, amended January 20th, 1871; transfer No. ; original date, Sept. 10th, 1877; original No. ;" then and there against the peace of the United States and their dignity, and contrary to the form of the statute of the said United States in such case made and provided.

49 THIRTEENTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present, that Selah Crosby Carll, late of the city and county of New York, in the district and circuit aforesaid, yoeman, heretofore, to wit, on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and eighty, at the southern district of New York, and within the jurisdiction of this court, feloniously and with intent to defraud the Bank of the Metropolis, a corporation duly organized under the laws of the State of New York, did pass, utter and publish to and upon the said Bank of the Metropolis, a certain falsely-made, forged, counterfeited, and altered obligation and security of the United States, to wit, a falsely made, forged, counterfeited, and altered bond of the United States of the denomination of one thousand dollars, which said falsely made, forged, counterfeited, and altered bond, obligation, and security, was then and there in
40 words and figures following, that is to say:

"WASHINGTON, *Sept. 1st*, 1876.

"Office of the Secretary, Treasury Department. W. F. Funded loan of 1891. Interest 4½ per cent. Principal and interest payable in coin at the Treasury of the United States. 1,000.

"The United States of America are indebted to Selah C. Carll or assigns, in the sum of one thousand dollars.

"+23692+] [+23692+

"This bond is issued in accordance with the provisions of an act of Congress entitled 'An act to authorize the refunding of the national debt,' approved July 14th, 1870, amended by an act approved January 20th, 1871, and is redeemable at the pleasure of the United States, after the first day of September, A. D. 1891, in coin of the standard value of the United States, on said July 14th, 1870, with interest in such coin
from the day of the date hereof at the rate of four and a half per
51 centum per annum, payable quarterly on the first day De-
cember, March, June, and September in each year, the principal and *and* interest are exempt from the payment of all taxes or duties of the United States as well as from taxation in any form by or under State, municipal, or local authority. Transferable on the books of this office.

"W. P. TITCOMB.
"*Act'g Register of the Treasury.*

"Entered C. H. B. Recorded E. L. G. Act of July 1870."

And which said falsely made, forged, counterfeited, and altered bond, obligation, and security then and there purported to bear the imprint and the impression of the seal of the Department of the Treasury of the United States, and upon which said falsely made, forged, counterfeited,
and altered bond, obligation, and security, there and then was an
52 indorsement in words and figures following, that is to say: "Act
of July 14th, 1870. Amended January 10th 1871. Transfer No.
Original date July 16th, 1879. Original No. ;" then and there against the peace of the United States in such case made and provided.

STEWART L. WOODFORD,
United States Attorney.

53 (Indorsed:) U. S. circuit court. The United States of America vs. Selah C. Carll. X-d. Indictment. Passing counterfeit and altered United States bonds. U. S. Rev. St., § 5431. S. L. Woodford, U. S. district attorney. A true bill. F. F. Thompson, foreman. U. S. circuit court. Filed Mar. 8, 1881. Joseph M. Deuel, clerk.

(Also indorsed:) June 15, 1881, the defendant arra*n*g'ed and indict. read. Deft. plead not guilty. 18 ; the defendant called on . Recognizance and appearing same . Oct. 24, 1881, the defendant tried; verdict, guilty.

54 Afterwards in the said court the said Carll was arraigned and the said indictment was read to him, and he pleaded not guilty to the same, and the said plea was received and entered by the court. Afterwards he was tried on all the counts of said indictment except the fourth, sixth, and eighth in said court before a petit jury, and a verdict of guilty of all the charges contained in the remaining ten counts of said indictment was rendered by said jury on said trial. The charge
of the court to the jury was in the words following:

55 GENTLEMEN OF THE JURY: The indictment on trial before you contains ten distinct charges; these are distinct charges, each one of them is a separate offense. The defendant may be found guilty or acquitted on each one of those charges or on all. These

charges are similar in each of the counts, save only as to the description of the bond referred to in the counts. In each one of these counts the defendant is charged with having uttered to the Bank of the Metropolis, a certain described registered bond of the United States, which bond, the count says, was a forged and altered bond and was uttered by the defendant to that bank with intent to defraud the bank. This act, thus charged, is made an offense against the United States, by a statute which declares that: "Every person who, with intent to
56 defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or keeps in possession or conceals with like intent any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be punished by fine and imprisonment."

The instruments described in the several counts of this indictment are within that statute. They are securities of the United States.

The offense charged in these respective counts consist of an act and an intent. The act is the act of passing forged and altered bonds of the United States. The intent is the intent to defraud the Bank of the Metropolis.

In order to find the defendant guilty, therefor you must find, in respect to each of these counts, that this accused uttered the bond there mentioned to the Bank of the Metropolis, with intent to
57 defraud the bank, and that the bond was a bond of the United States altered in a material part. Two alterations have been spoken of here and evidence given in respect thereto. One is an alteration in numbers. Three of these bonds according to the witness have had their numbers altered. All of them according to the claim of the Government, have had the payee's name taken out and the name of the defendant inserted.

In order to make the bond an altered and forged bond within the meaning of this indictment and this statute, the alterations must be of a material part of the bond. The mere alteration of the number in these bonds would not make them forged and altered bonds within the meaning of this statute. The evidence which has been offered
58 in respect to the alteration of the numbers is competent evidence, important evidence to be considered by the jury in determining the other question of whether the payee's name has been altered, but it is only in that aspect that it is material here.

The Government charges that, in every one of these instances, the payee's name has been altered; that the name of the person to whom the bond was originally issued has been taken out, and the name of the defendant inserted. If that be true, it is a forged and altered bond within the meaning of the statute and of this indictment.

You come then to the question of fact in this case. As to the uttering you will find that he uttered the bonds; there is no dispute about that; that he uttered these bonds to the Bank of the Metropolis and borrowed money on them is not denied. But the Government
59 are required to prove, in order to convict the defendant on any count, that the bond described in that count has had the name of the payee taken out, and the name of the defendant Carll, inserted. All the bonds have his name there now.

It is not necessary to find that the defendant made these alterations. He is not charged with having made them in this indictment. It is not necessary to find that he stole these bonds; it is not charged in this indictment that he stole them. What it is necessary to find is, that he uttered the bonds; that the bonds were falsely uttered in the particu-

lar I have mentioned, and that when the defendant uttered a bond he knew it then to have been so altered. The question then is, have these respective bonds been so altered? That is a question of fact for you. It is incumbent on the Government to make out this fact
60 affirmatively. It is a question to be decided by the jury and not by the court, and in this case you are called on to decide the question of fact, in respect to every bond mentioned in this indictment whether or no this bond has been altered by striking out the name of the person to whom it was issued and inserting the defendant's name, which it now bears.

If you are not satisfied from the evidence beyond a reasonable doubt of this alteration in respect to any bond, then in respect to that bond it is your duty to acquit the man.

The burden of proof is upon the Government to satisfy you in respect to each one of these bonds, for each bond is described to be treated by itself; if you are not satisfied as to the fact of that alteration, then it is your duty to acquit the prisoner. If you are satisfied that that alteration has been made, then it is your duty to convict
61 the prisoner, provided you find further the intent as charged in the indictment. If you find the act charged in the indictment to have been done, then you enquire what was the intent with which the accused did that act. What was his intent when he uttered the false bond upon the Bank of the Metropolis? The intent cannot be proved directly. It is shown by circumstances surrounding the transaction. What the defendant knew; what he must have known; what were his motives; how he did the thing; where he did it—all those are circumstances to be considered by the jury in determining as to this intent. If you find that this defendant, when he uttered any one of those bonds, knew at the time that it had been altered in the particular I have described, then you would be justified in finding that he intended to accomplish what that act must have accomplished, the de-
62 frauding of the bank. The repetition of the transaction; the openness of the transaction; the fact that there is no evidence of the prisoner's concealment; the fact that he was known; not a stranger to the bank; the fact that he did not go away—all those are circumstances to be considered by the jury in forming their opinion as to what was the intent of the defendant when he offered the bond as a bond issued to him when it was a bond, if you so find, which had never been issued to him.

The mere possession of the bonds by the defendant does not prove that he altered the bonds; but if you find from the evidence that the defendant borrowed money from the bank on the security of a bond when he knew that the name of the person to whom the bond had been issued as payee had been subsequently taken out and his own
63 name inserted, and that such bond was not registered in his name, you can find that he uttered these bonds with intent to defraud, as charged in the indictment.

I have been requested by the defendant's counsel to give you many charges which I must for the most part decline. Some or them I give as follows:

"In determining whether the bonds described in the indictment were in fact originally issued to the defendant, or whether those bonds were originally issued to other parties, the jury will not be conclusively bound by the transcripts of portions of books in the Treasury Department offered in evidence.

"The jury may properly take into consideration the fact, if they find

it to have been proven that the transcripts or copies offered in evidence were merely from portions of the books from which those
64 copies were made, and may from all the circumstances of the case determine whether such copies of portions only of those books establishes the fact of the issuance of the identical bonds described in the indictment to other parties than the defendant beyond a reasonable doubt, and if from all these circumstances the jury entertain a reasonable doubt as to the parties to whom the identical bonds in controversy were originally issued, that doubt must be held in favor of the accused."

I also give you this: "In determining whether there have, in fact, been any alterations made in any or either of the bonds described in the indictment, either as to the numbers of the bonds or as to the name of the payee, the jury have the right to examine the bonds themselves, and are not concluded by the testimony of any alleged expert
65 upon that subject." But I add that the testimony of the expert is competent testimony, which the jury are bound to take into consideration in connection with the bonds themselves and their own examination.

I also give you this: "The previous good character of the accused, if the jury believe it to have been shown, may properly be taken into consideration by them, and should have its due weight in solving any question of doubt upon any material point in the case which may exist in their minds. All reasonable doubts upon all material points should be in favor of the accused, and previous good character is a fact proper and legitimate for the jury to take into consideration." I add that a good character is no defense. In every criminal case a man has a right to put his good character before the jury, and the jury may consider the other evidence in the light of his good character. But it is
66 not impossible that a man who has previously borne a good character should commit a crime; and the fact that a man has a good character is no defense, if you are satisfied from the rest of the evidence, considered in the light of his good character, that the offense has been committed.

I am also asked to charge that: "The jury are not at liberty to draw any inference unfavorable to the defendant, from the fact that he has not been placed upon the stand as a witness in his own behalf."

It is the duty of the Government in this case, as in every criminal case, to make out the charges by competent evidence. They are bound to satisfy you, from their evidence, that this offense, as they have charged it, has been committed by this defendant; and he has the right to keep silent, if he is so advised. He is entitled to the
67 presumption innocence. The burden is upon the Government, but if you are satisfied from this evidence in respect to any one of these bonds uttered upon the Bank of the Metropolis that that bond was altered by having the name of the payee to whom it was issued stricken out and the defendant's inserted, and that the accused knew that fact and uttered that bond for the purpose of defrauding the bank, then it is your duty to convict him. He is entitled to the benefit of every reasonable doubt—not to every possible doubt. Give him the benefit of any reasonable doubt that you may entertain upon any of the material facts to which I have called your attention; but if you find that he has done this act with this intent, your duty is to convict him.

68 After the said Carll was so convicted, and before he was sentenced, and before judgment was entered on said verdict, he

moved in said court, at a stated term thereof begun on the third Monday of October, in the year of our Lord one thousand eight hundred and eighty-one, and held by Samuel Blatchford, the circuit judge of the second judicial circuit, and Charles L. Benedict, a district judge designated by statute to sit in said court, to arrest the judgment on said verdict on the ground of the insufficiency of the said indictment. On the hearing of said motion before the said judges and before the said court held by them, the following questions occurred, on which they were divided in opinion; whereupon the following points, upon which they disagree, are, during the same term, upon the request of the said United States, by the district attorney of the United
69 States for the southern district of New York, as counsel for the said United States, stated, under the direction of the said judges, as follows:

FIRST QUESTION. Is the indictment sufficient, after verdict, to warrant judgment thereon because the charge contained in each count of the indictment is there set forth in the language of the statute creating the offence, namely section 5431 of the Revised Statutes of the United States?

SECOND QUESTION. Is the obvious intention of said statute such that knowledge on the part of the person passing or uttering or publishing a falsely made, forged, counterfeited, or altered obligation or security of the United States, that the obligation or security so passed or uttered or published by him is falsely made, forged, counterfeited, or altered, must be charged in the indictment in order to make
70 out the offence created by said statute?

THIRD QUESTION. Is the averment of the indictment that the accused did pass, utter, and publish the falsely made, forged, counterfeited, and altered bond described, with intent to defraud, an averment of knowledge by the accused that the bond so passed, uttered, and published by him was a falsely made, forged, counterfeited, or altered bond, in such form as will, after verdict, warrant the entry of judgment on the indictment?

FOURTH QUESTION. Is the averment of the indictment that the accused feloniously did pass, utter, and publish the falsely made, forged, counterfeited, and altered bond described, an averment that he knowingly uttered such bond, and an averment in such form as will, after verdict, warrant the entry of judgment on the indictment?

71 FIFTH QUESTION. Is the indictment sufficient in law to warrant judgment thereon against the accused?

Witness the hands of the said judges and of the clerk of the said court, and the seal of said court, this seventh day of February, in the year of our Lord one thousand eight hundred and eighty-two.

SAMUEL BLATCHFORD,
Circuit Judge.

CHAS. L. BENEDICT,
District Judge.

[SEAL.]

J. M. DEUEL,
Clerk U. S. Circuit Court, S. D. of N. Y.

(Indorsed:) U. S. circuit court. Filed Feb. 8, 1882. Joseph M. Deuel, clerk.

REC. 1202—2

72 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Joseph M. Deuel, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify, that the foregoing pages, numbered from one to seventy-two, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of The United States against Selah C. Carll, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 16th day of February, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the said United States the one hundred and sixth.

[SEAL.] JOSEPH M. DEUEL, *Clerk.*

(Indorsement of cover:) No. 1202. The United States, plaintiff, vs. Selah Crosby Carll. S. New York, C. C. U. S. Certificate of division. Filed 18th February, 1882.

OFFICE SUPREME COURT U.S.
FILED
APR 10 1882
JAMES H. McKENNEY, Clerk

In the Supreme Court of the United States.

OCTOBER TERM, 1881.

THE UNITED STATES
vs.
CARLL. } No. 1202.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1881.

THE UNITED STATES
vs.
CARLL. } No. 1202.

BRIEF FOR THE UNITED STATES.

The defendant was convicted (Record, folio 53) in the circuit court of the United States for the southern district of New York, upon an indictment in ten counts (folio 54), for having passed certain fraudulently-altered United States bonds.

After conviction, a motion was made in arrest of judgment, for that the indictment was defective in not alleging in so many words that the defendant *knew* the bonds to be altered, &c., at the time when they were uttered.

The indictment was found under section 5431 of the Revised Statutes, which is as follows:

> Every person who, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or brings into the United States with intent to pass, publish, utter, or sell, or keeps in possession, or conceals, with like intent, any falsely made, forged, counterfeited, or altered obligation, or other security of the United States, shall be punished by a fine of not more than five thousand dollars, and by imprisonment at hard labor not more than fifteen years.

Upon the motion in arrest the learned judges of the circuit court were divided in opinion, and thereupon (Record, p. 17) have certified certain questions to this court, as follows:

1. Is the indictment sufficient after verdict to warrant judgment thereon because the charge contained in each count of the indictment is there set forth in the language of the statute creating the offense, namely section 5431 of the Revised Statutes of the United States?

2. Is the obvious intention of said statute such that knowledge on the part of the person passing or uttering or publishing a falsely made, forged, counterfeited, or altered obligation or security of the United States, that the obligation or security so passed or uttered or published by him is falsely made, forged, counterfeited, or altered, must be charged in the indictment in order to make out the offense created by said statute?

3. Is the averment of the indictment that the accused did pass, utter, and publish the falsely made, forged, counterfeited, and altered bond described, with intent to defraud, an averment of knowledge by the accused that the bond so passed, uttered, and published by him was a falsely made, forged, counterfeited, or altered bond in such form as will, after verdict, warrant the entry of judgment on the indictment?

4. Is the averment of the indictment that the accused *feloniously* did pass, utter, and publish the falsely made, forged, counterfeited, and altered bond described an averment that he knowingly uttered such bond, and an averment in such form as will, after verdict, warrant the entry of judgment on the indictment?

5. Is the indictment sufficient in law to warrant judgment thereon against the accused?

I.

The indictment is good, or at all events is sufficient, *after verdict* to warrant judgment thereon.

The crime charged is purely statutory, and the general rule in such case is that it is sufficient to follow the words of the statute.

In the United States *vs.* Simmons, 96 U. S., 360, the defendant was indicted for violating a statute regulating the distillation of spirits. One question was whether a count which charged a *procuring of another party to use the still, &c., but did not name such party*, was valid. Upon this question the court said:

> Where the offense is purely statutory, having no relation to the common law, it is, "as a general rule, sufficient in the indictment to charge the defendant with acts coming fully within the statutory description, in the substantial words of the statute, without any further expansion of the matter." I, Bishop, Crim. Proc., sec. 611, and authorities there cited. But to this general rule there is the qualification, fundamental in the law of criminal procedure, that the accused must be apprised by the indictment, with reasonable certainty, of the nature of the accusation against him, to the end that he may prepare his defense, and plead the judgment as a bar to any subsequent prosecution for the same offense. An indictment not so framed is defective, although it may follow the language of the statute.

The principle thus enforced is, that in applying a statute which creates an offense to an alleged offender, the ordinary rules of pleading directed to the production of singleness, certainty, &c., of an *issue* as to guilt, must be observed. In respect to these *circumstances* such

statutes are necessarily silent, and therefore an observance of their words in other particulars will be of no protection. So also is Cruikshank's case, 92 U. S., 542.

But as regards the offense itself so laid to charge, it seems plain that it must necessarily be only *the one defined in the act*, and of course *the one most safely defined by the very words of the act.*

If the words of the act import that the alleged offender must have done certain things KNOWINGLY, *those same words will import as much when used in the indictment.* If, however, the act does not import such knowledge, an express averment of knowledge in the indictment would be surplusage, and careless pleading.

Such, as is submitted, is the case here. I mean, that *the offence alleged in the indictment is identical with that in the statute.* Whether the statutory offense presented in the indictment required *knowledge* as essential thereto was a matter of law to be administered at the trial by the presiding judge; who, in this case decided that it did, and so instructed the jury. To that, or any other incident of the trial, the government of course makes no objection.

The United States *vs.* Staats, 8 How., 41, was an indictment under a statute which provided that the transmission to any officer of the United States of any writing in support of a claim, with intent to defraud the United States, knowing the same to be false, should be felony. The indictment pursued the words of the statute, but *did not charge the defendant with a felonious intent* in what he did.

The court held that although such charge was necessary in indictments for felony at common law, yet in

statutory felonies, if such intent were not in terms made a necessary ingredient in the offense, an averment thereof might be omitted.

The principle in Staats' case seems to be in point here. For although no one can commit a felony without having in judgment of law an intent to commit it, that is, without having a felonious intent; yet unless the statute make that intent a substantive ingredient in the offense, it need not be averred, even where the omission is contrary to a well-known common law rule of pleading in such cases. The existence of such intent follows necessarily as from the statement of the case in the statute so also from that in the indictment. In both places it is inextricably involved in the other terms which define the offense; and consequently may be said to be *expressed* in both. So here whatever *sanity, knowledge, intent*, or other state of mind is required by the statute for guilt of the offense therein defined will be conclusively presumed to exist, from the existence of the facts therein stated as substantive ingredients of the offense.

In the United States vs. Mills, 7 Peters, 138, the defendant was indicted for procuring, &c., one Straughan, a mail carrier, to embezzle, &c., a letter. *There was no allegation that Straughan had embezzled the letter in question.* The court said:

> The general rule is that in indictments for misdemeanors created by statute, it is sufficient to charge the offense in the words of the statute. There is not that technical nicety required as to form, which seems to have been adopted and sanctioned by long practice in cases of felony, and with respect to some crimes, where particular words must be used, and no other words, however synonymous they may seem, can be substituted. But in all cases the offense must be set forth with clearness, and all necessary certainty, to ap-

prise the accused of the crime with which he stands charged. And we think the present indictment contains such certainty, and sufficiently alleges that the offense had, in point of fact, been committed by Straughan. It charges the defendant not only with advising, but procuring and assisting Straughan to secrete and embezzle, &c. This necessarily implies that the act was done; and is such an averment or allegation, as made it necessary on the part of the prosecution to prove that the act had been done.

United States *vs.* Howell, 11 Wall., 432, presents the case of an indictment upon the act of February 25, 1862, the original form of the statute which afterwards became section 5431, now before the court. There indeed it was expressly charged that the defendant *knew* the note to be forged. Nothing however turned upon that allegation and it may well have been surplusage. In another respect, one that was discussed, the case is pertinent as showing that even if there be an appearance of *repugnancy* about the words of the statute, the indictment may pursue such words without explanation and be valid, as where the offense within the words of the act and of the indictment, was that of *forging, &c.*, a note *issued under the authority of an act of Congress.*

The court said in effect, that if the indictment pursued the language of the statute, any question as to the validity of the former resolved itself into a mere criticism of the latter.

However, in any event it is now too late to raise this objection.

The defect, if such it be, is cured by the verdict. The general and well-known rule of aider by verdict is thus stated by Bishop (1 Criminal Procedure, § 707).

At common law the verdict cures some things as to which the rule is the same in criminal causes as in civil. It is that, though a matter either of form or of substance is omitted from the allega-

tion or alleged imperfectly, still, if under the pleadings the proof of it was essential to the finding, it must be presumed after verdict to have been proved, and the party cannot now for the first time object to what has wrought him no harm.

The learned judge below expressly told the jury that it was necessary for *conviction* that the crime should have been committed with *knowledge* (folios 59, 61, 67).

In this connection it may be added that the defendant was not *prejudiced* by the omission in question (supposing that there was an omission), within the meaning of section 1025 Rev. Stat.:

No indictment found and presented by a grand jury in any district or circuit or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant.

The frequency with which the words *knowing*, *knowingly*, &c., are used in denoting similar offenses in the chapter which contains section 5431, taken into consideration with their being left out in that section and in the original act of which it formed a part; and as well also in sections 5433, 5434, 5458, and 5461 shows that the form in which 5431 appears was given to it ex industria.

Upon the whole, I submit that, understanding question 2 (above) as meaning a *formal charge*, in terms, of *knowledge* by *the defendant*, that question should be answered in the negative; and that the other questions should be answered in the affirmative.

S. F. PHILLIPS,
Solicitor-General.

Charles S. Hamilton & Co., Printers, 61 Cedar St., N. Y.

U. S. Supreme Court.

THE UNITED STATES

vs.

SELAH C. CARLL.

Statement of Facts.

Carll was convicted in the District Court for the Southern District of New York, on an indictment charging that he "feloniously and with intent to defraud . . . did pass utter and publish . . . a false made, forged and counterfeited and altered obligation and security of the United States, to wit," &c., setting forth the face of the bonds.

The indictment contained no *scienter* clause or averment whatever, and made no charge or intimation that Carll *knew* that the bonds were false made, forged, counterfeited or altered, &c.

On a motion in arrest of judgment, the court below, sitting in *banc*, framed five questions to be taken to the Supreme Court for decision.

POINTS.

I.

First Question.—"Is the indictment sufficient, after verdict, to warrant judgment thereon because the charge contained in each count of the indictment is there set forth in the language of the statute creating the offence, namely, section 5431 of the Revised Statutes?"

Since the objection to the indictment is not at all on the ground of *defective method* in any averment made, but on the ground of an *entire omission* of a necessary averment, this question can hardly mean more than the simpler one,—"Is the indictment valid or invalid on its face."

(*a.*) For, if the indictment be invalid before verdict it is equally so after verdict, and judgment on an invalid indictment could not be warranted by reason of the fact that a verdict had been found under it.

The indictment being the starting point and foundation of all the proceedings, if that be invalid at the start subsequent proceedings resting upon it cannot validate it, but this original defect runs through all such subsequent proceedings and renders them invalid also.

Com. *v.* Bean, 80 Mass. (14 Gray) 52;
Com. *v.* Bean, 65 Mass. (11 Cushing) 414;
State *v.* Barrett, 42 N. H., 466;
Lee *v.* Clarke, 2 East, 333.

The only defects in an indictment which are cured by a verdict upon it are errors of a clerical nature, or in the method of averment, and not those which go to the very substance and essentials of an indictment.

The law on this point is tersely stated in Reg. *vs.* Bradlaugh, 38 L. T. (N. S.) 125 Cotton, L. J., says: "The rule is simple; verdict will cure only defective statements. This is not a mere defective statement, there is an absolute and total omission. Such an omission has not been cured, and cannot be cured, by verdict; therefore, according to settled and well-established rules of law, the defendants are entitled to our judgment."

It is therefore respectfully submitted that the limitation "after verdict" in the question does not affect the matter at all, and that the indictment is not sufficient, after verdict, to warrant judgment thereon if it is so defective that a motion to quash, if made before verdict, would have been granted.

(*b.*) The fact that the offence charged is set forth in the language of the statute creating it, does not relieve the indictment from the application of any rule or test as to its validity in all respects except as to the nature of the offence charged.

The sole aim, purpose and effect of the statute in question is to create or define an offence and prescribe the penalty therefor. It does not affect the rules of procedure, practice or pleading at all.

Charging an offence in the language of the statute creating it has no effect or virtue superior to charging it in any other language which sets forth the nature of the offence in terms equally clear, comprehensive and definite.

The only purpose or effect of charging in the precise language of a statute is to make sure that *the nature* of the offence is sufficiently indicated to the accuser.

1 Bishop's Crim. Law, § 612.

"It is not always sufficient to charge the offense in the words of the statute." (Shaw, C. J., in Com. *v.* Bean, 80 Mass. (14 Gray) 53.

Wharton's Crim. Pl. and Pr., § 220.

Where the common law rules respecting indictments are not modified by statutes, an indictment upon a statute must conform to those rules the same as one drawn on the common law" (Bishop on Statutory Crimes § 378)

Rooney v. The State 5 Ohio 238

Stofer v The State 8 W. Va. 689;
The State v Lee 19 Wis. 562;
Davis v. The People 19 Ill. 74;
The State v Nolen 29 Ind 212;
Commonwealth v Mash 75 Mass (7 Gray) 329

"When the offence is at common law, statutory provisions not directly repugnant to the common law are cumulative, and either law may be followed" (Bishop's Stat. Crimes § 250)

The People v Coycroft 2 Cal 243; Rex v Dick 10 Mod, 386; Gooch v. Stevenson 10 Mc & W.

The offense created by the statute under discussion is an offense at common law as well; and when such is the case, it is entirely optional with the pleader whether to charge in the words of the statute or follow the common law method of stating the offense. Bishop on Statutory Crimes §§ 164-6, 732 1 Bishop's Crim. Proced § 579

But the *nature of an offence*, statutory or otherwise, may be sufficiently set forth, and yet the indictment be fatally defective on numerous other grounds.

Therefore, although it is well settled that charging an offence in the language of the statute creating it generally shields an indictment from being held invalid *so far* as its validity depends upon sufficiently *indicating the nature* of the offence, it by no means follows that the indictment, though sufficient in this one respect, is not fatally defective for failure to comply with a score of other requirements which the common law has, from time immemorial, held essential to render an indictment valid.

"Though the acts charged may be part of a larger crime, still, if the remaining part is not charged, to visit him with the punishment ordained for the larger is to punish him without accusation" (1 Bishop Crim Proced. § 80.

In other words, the *nature of the offence* may be sufficiently indicated and yet the indictment be utterly invalid for omitting other allegations or charges which the rules of pleading make equally essential to render the accused liable for the offence. Bishop on Statutory Crimes § 378-4

Hence, it is respectfully submitted that the proper answer to the first question is that the fact that the charge contained in each count of the indictment is there set forth in the exact language of the statute creating the offence is very far from being conclusive as to the validity of the indictment, and that it does not follow therefrom that the indictment is sufficient, after verdict, to warrant judgment thereon.

II.

Second Question.—"Is the obvious intention of said statute such that knowledge on the part of the person passing or uttering or publishing a falsely made, forged, counterfeited or altered obligation or security of the United States that the obligation so passed or altered or published by him is falsely made, forged, counterfeited or altered, *must be charged* in the indictment in order to make out the offence created by said statute?"

As the statute itself is entirely silent on the questions of pleading and proving the offence created by it, "the obvious intention" necessarily is that those questions should be determined by the ordinary, well known and long established rules of pleading and proof.

"When the common law rules respecting indictments are not modified by statutes, an indictment upon a statute must conform to those rules the same as one drawn on the common law" (Bishop on Statutory Crimes § 378)

The fact that the statute does not prescribe that the offense must be committed "knowingly" does not warrant the construction or inference that the offense is complete without guilty knowledge but rather the reverse. Anderson v. The State 7 Ohio 61 3

The offense is one in which knowledge is requisite to make it complete under the common law; and as a statute making the offense complete without guilty knowledge would therefore be in derrogation of the common law, it is necessary that the statute should take away the common law limitation by express and unequivocal terms, or by absolutely necessary implication. It cannot be done by doubtful inferences. If the statute omits to take away the common law accompaniment of the offense, either by express terms or by unavoidable implication, the presumption is that it was not intended to take it away. Bishop on Stat. Crimes § 114, 119, 155—

Therefore, by the ordinary rule of construction, the omission of the statute to prescribe that guilty knowledge shall *not* be necessary to complete the offense, should be construed as leaving in force the

common law rule that such knowledge is essential to an indictment and conviction for this offense.

Com. *v.* Bean, 80 Mass., 53.

Unless a statute creating an offense in which *scienter* is an essential element under the common law principles, expressly prescribes that guilty knowledge is not requisite to complete the offense, there can be no conviction of a criminal offense without a charge of guilty knowledge.

2 Bishop's Crim. Proc., § 451;
Birney *v.* State, 8 Ohio, 230;
Crabtree *v.* State, 30 Ohio, 382;
Farrell *v.* State, 32 Ohio, 456;
Brown *v.* State, 24 Ind., 112;
Farbach *v.* State, 24 Ind., 77;
Goetz *v.* State, 41 Ind., 162;
State *v.* Morton, 8 Wis., 356.

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It is true that great latitude is allowed in *proving* guilty knowledge *when it has been charged* but proof thereof is absolutely requisite to conviction, and no proof thereof can be allowed without the indictment charges guilty knowledge.

Scienter is of the very gist and essence of the offence created by the statute under consideration. From the very nature of the matter, *knowledge* that the security or obligation uttered is false, forged, counterfeited or altered is obviously the *gravamen* of the offence, the most important and serious element in it.

It is like the offence of receiving stolen goods, when knowledge that they are stolen is of the essence and must be charged and proved.

That such knowledge must be charged in order to render an indictment under the statute valid seems almost too manifest to require discussion or citation of authorities.

It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of laws, without expressing its intention with irresistable clearness" (Maxwell's Interpretation of Statutes p 66)

"Where the indictment is for uttering the forged instrument, or for having it in possession with intent to utter it or the like, knowledge of its suspicious character is an essential element in the criminal intent, and it must be alleged and proved." (2 Bishop's Crim Proced § 425)
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If there can possibly be a case in which a charge of knowledge is essential to the validity of the indictment this is most assuredly such a case.

That a *scienter* clause, a charge of guilty knowledge, is, in many cases, essential to the validity of the indictment is familiar to every lawyer. It is a fact, a rule of pleading, that runs through all the books on pleading, forms and evidence for centuries.

And a case can hardly be imagined in which such a clause or charge is more essential to the validity of the indictment than it is in this case. Every ground, every reason, every object that ever has been or can be given for the existence, use and purpose of this time-honored rule of pleading is manifestly present in this case.

There is no escape from the necessity of a *scienter* clause to make an indictment under this statute valid without going so far as to hold that such a clause is *never* essential to the validity of an indictment.

The answer to the second question, therefore, is that it is "the obvious intention" of the statute that the proper way to plead the offence created by it must be determined by well known common law rules of pleading; and that, by those rules, knowledge that the securities uttered were false made, forged, counterfeited or altered must be charged against the accused in the indictment in order to make out the offence created by the statute.

III.

Third Question.—"Is the averment of the indictment that the accused did pass, utter and publish the falsely made forged, counterfeited and altered bond described, *with intent to defraud* an averment of knowledge by the accused that the bond so passed, uttered and published by him was a falsely made, forged, counterfeited or altered bond, in such

form as will after verdict warrant the entry of judgment on the indictment."

It is respectfully submitted that, for the same reasons given in discussing the first question, the limiting words "after verdict" do not affect the question.

One conclusive answer to this question may be most conveniently reached by inquiring if it is not *possible* that the accused might pass the securities "with intent to defraud" without knowing or even suspecting that they were false made, &c., and without their being so in fact.

If this be possible, then the averment of "intent to defraud" cannot be treated as an averment of knowledge that the bonds were false made, &c.; for, in criminal pleading, nothing can be taken by intendment, all must be positive and certain.

Now *it is easily possible* that the securities could have been uttered with intend to defraud, and yet without any knowledge or suspicion that they were false made, &c.

For instance, suppose he had uttered the securities knowing them to have been stolen but without any suspicion that they were false made, &c., he could still be charged with uttering them "with intent to defraud," although he was entirely innocent of all knowledge that they were false made, forged or altered.

Nay, even suppose the securities were perfectly good and valid in every respect but were uttered by the accused with knowledge that they were stolen.

He could then be charged with uttering them "with intent to defraud" although, in fact, the securities were not false made, forged, counterfeited or altered at all.

When the question arises as to the use of words of similar import on a *charge actually made*, words of substantially the same import may be substituted one for another; but the fact that words of

a somewhat similar meaning are used in a *charge having an entirely different object and purpose* cannot be held to constitute a *charge which the indictment does not pretend to make specifically*; for this would be to violate the invariable rule that nothing shall be taken by intendment in an indictment for crime.

Averment of "intent to defraud" is not equivalent to an averment of guilty kdowledge.

State vs. *Nicholson*, 14 La. An., 785.
State vs. *Stalls*, 37 Texas, 440.

It thus clearly appears that a charge of "intent to defraud" in no wise obviates or lessens the necessity of a specific averment of knowledge of the character of the securities.

The third question must therefore be answered in the negative.

IV.

Fourth Question,—"Is the averment of the indictment that the accused *feloniously* did pass, utter and publish the falsely made, forged, counterfeited and altered bonds described, an averment that he knowingly altered such bond, and an averment in such form as will, after verdict, warrant the entry of judgment on the indictment."

This precise question has been adjudicated in the negative. Henderson v. State 14 Tex. 60

The argument used in answering the third question applies with equal force in answering this question, and by substituting the word "feloniously" for the words "with intent to defraud," the preceding answer may be read as the answer to this fourth question.

V.

Fifth Question.—"Is the indictment sufficient in law to warrant judgment thereon against the accused?"

This question is only a summation of the first four questions, and if they are all answered in the negative this must be answered in the negative also.

There is nothing to be said under this question except to repeat the arguments already urged under the preceding questions.

In conclusion, therefore, it is respectfully submitted that the indictment does not warrant judgment being entered upon it. The *scienter* clause, so usual and familiar in indictments for centuries, and the special office and necessity for which exists in no other kind of a case so certainly and urgently as in one like this, in which *scienter* is the very gist and *gravamen* of the offense is entirely omitted.

Its omission is fatal to the indictment and should arrest judgment upon it.

To hold otherwise would be to reverse one of the most well-settled rules of pleading and establish a precedent for treating the *scienter* clause as no longer necessary to the validity of any indictment.

~~This precise question has been adjudicated in the negative.~~

~~*Henderson vs. State*, 14 Texas, 503.~~

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